IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

In re Patent Application of

BURBRIDGE, et al.

Serial No. 10/538,122

Filed: June 7, 2005

Title: METHOD FOR CO-ORDINATING NETWORKED GROUP MEMBERS AND DEVICES PERFORMING THE METHOD

Atty Dkt. LSN-36-1906
C# M#
Confirmation No. 2009
TC/A.U.: 2618
Examiner: Adel Y. Youssef
Date: October 20, 2008

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

☐ **Correspondence Address Indication Form Attached.**

☐ **NOTICE OF APPEAL**
Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the Examiner twice/finally rejecting applicant's claim(s). $540.00 (1401)/$0.00 (2401) $

☒ An appeal **BRIEF** is attached in the pending appeal of the above-identified application $540.00 (1402)/$0.00 (2402) $ 540.00

☐ Credit for fees paid in prior appeal without decision on merits -$ ( )

☐ A reply brief is attached. **(no fee)**

☐ Petition is hereby made to extend the current due date so as to cover the filing date of this paper and attachment(s)
One Month Extension $130.00 (1251)/$0.00 (2251)
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☒ **CREDIT CARD PAYMENT FORM ATTACHED.**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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BURBRIDGE, et al. Atty. Ref.: 36-1906

Serial No. 10/538,122 TC/A.U.: 2618

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For: METHOD FOR CO-ORDINATING NETWORKED GROUP MEMBERS AND DEVICES PERFORMING THE METHOD

* *

(October 18, 2008 = Saturday)
October 20, 2008 (= Monday)

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Alexandria, VA 22313-1450

APPEAL BRIEF UNDER 37 C.F.R. § 41.37(c)

Sir:

Applicant has appealed to the Board of Patent Appeals and Interferences (Notice of Appeal filed August 18, 2008) from the last decision of the Examiner (First Final Office Action dated March 18, 2008 and Second Final Office Action dated August 20, 2008). An appeal brief pursuant to 37 C.F.R. § 41.37(c) is now presented.

TABLE OF CONTENTS

(I) REAL PARTY IN INTEREST

The real party in interest is British Telecommunications public limited company, a British corporation of the United Kingdom.

(II) RELATED APPEALS AND INTERFERENCES

The appellant, the undersigned, and the assignee are not aware of any related appeals, interferences, or judicial proceedings (past or present), which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

(III) STATUS OF CLAIMS

Claims 1, 3-9, 17, 19, 21-26, and 35-36 are pending and have been rejected. Claims 2, 10-16, 18, 20, and 27-34 previously were cancelled. The rejections of claims 1, 3-9, 17, 19, 21-26, and 35-36 are being appealed. No claims have been substantively allowed.

(IV) STATUS OF AMENDMENTS

A first Final Office Action was issued on March 18, 2008. Applicant filed an Amendment under 37 C.F.R. § 1.116 on July 18, 2008, which merely proffered four minor typographical changes to the specification, i.e., it did not proffer any claim amendments. A second Final Office Action was issued on August 20, 2008, which did not acknowledge that Applicant's proposed amendments to the specification were entered or that Applicant's Notice of Appeal was filed on August 18, 2008. Instead, the second Final Office Action merely attempts to clarify the grounds for rejecting claims 4, 7-8, 17, 19, 21-26, and 35-36 and, in particular, it specifically identifies the Beckmann et al. reference (U.S. Publication No. 2005/0007990) in such rejections. No further amendments were filed following the issuance of the second Final Office Action. Thus, the status of the claims is the same as that presented in the Amendment filed on December 21, 2007, and Applicant assumes that the amendments to the specification proffered in the July 18, 2008 Amendment under 37 C.F.R. § 1.116 were not entered.

(V) SUMMARY OF CLAIMED SUBJECT MATTER

Each independent claim, each dependent claim argued separately, and each claim having means plus function language is summarized below including exemplary reference(s) to page and line number(s) of the specification.

A. Introduction

The invention of the claims relates to a network channel that is used as a waiting channel, wherein members of a group other than a first member join the waiting channel while performing an action or process, and then leave the waiting channel once the action or process has been performed. Once all of the members have left the waiting channel, the first member of the group then performs an action or process. In order to indicate to the first member that all of the other members have left the waiting channel, a protocol such as the Multicast Source Notification of Interest Protocol (MSNIP) may be used.

B. Independent Method Claim 1

Independent claim 1 relates to a method for co-ordinating a group of members, with the group comprising a first member and one or more other members, and with each member being arranged to communicate with the other members of the group via a network and, for at the first one of the group members, the method comprises the following steps (e.g., Fig. 5 flow diagram; p. 3, lines 12-16; p. 13, line 23 to p. 14, line 22). At least one waiting channel is monitored for messages indicating that at least one of the one or more other members are joined to the waiting channel, with the waiting

channel relating to an action or process to be performed (e.g., step 5.5 in Fig. 5; p. 3, lines 17-19; p. 14, line 30 to p. 15, line 4; p. 16, lines 4-7). It is determined from the monitoring if all of the other members have left the waiting channel (e.g., step 5.6 in Fig. 5; p. 16, lines 4-14). The action or process is commenced in the event that it is determined as a result of the monitoring that all of the other members have left the waiting channel (e.g., step 5.8 in Fig. 5; p. 3, lines 19-20; p. 16, lines 15-24). The action or process to be performed comprises transmitting data onto one or more other channels (e.g., step 5.8 in Fig. 5; p. 16, lines 15-24).

C. Independent Device Claim 19

Independent claim 19 relates to a device arranged to co-ordinate with one or more other devices, with each device being arranged to communicate via a network (e.g., device 1 in Fig. 2 and network of Fig. 4; p. 3, lines 12-16; p. 9, lines 8-25; p. 13, line 23 to p. 14, line 22). Channel monitoring means are arranged in use to monitor at least one waiting channel for messages indicating that at least one of the one or more others of the devices are joined to the waiting channel (e.g., step 5.5 in Fig. 5; p. 3, lines 17-19; p. 14, line 30 to p. 15, line 4; p. 16, lines 4-7), with the waiting channel relating to an action or process to be performed and to determine from monitoring the waiting channel if all of the other members have left the waiting channel (e.g., step 5.6 in Fig. 5; p. 16, lines 4-14). Means for performing an action or process are so arranged such that in the event that it is determined as a result of monitoring performed by the channel monitoring means waiting channel that all of the other devices have left the waiting channel, with the means

for performing an action or process commences the action or process (e.g., step 5.8 in Fig. 5; p. 3, lines 19-20; p. 16, lines 15-24). The means for performing an action or process comprises data transmission means arranged in use to transmit data onto on or more other channels (e.g., step 5.8 in Fig. 5; p. 16, lines 15-24).

D. Independent Method Claim 35

Independent claim 35 relates to a method of group co-ordination using a network (e.g., Fig. 5 flow diagram; p. 6, lines 1-6; p. 13, line 23 to p. 14, line 22). Members of a group other than a first member join at least one network channel designated as a waiting channel while performing an action or process (e.g., step 5.3 in Fig. 5; p. 15, line 30 to p. 16, line 3), and then leave the waiting channel once the action or process has been performed (e.g., step 5.4 in Fig. 5; p. 15, line 30 to p. 16, line 3). The first member of the group then commences an action or process comprising transmitting data onto one or more channels other than the waiting channel (e.g., step 5.8 in Fig. 5; p. 3, lines 19-20; p. 16, lines 15-24).

(VI) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 3, 5-6, and 9 stand rejected under 35 U.S.C. § 103(a) as allegedly being "obvious" over Carroll et al. (U.S. Patent No. 6,327,630) in view of Fenner et al. (Multicast Source Notification of Interest Protocol (MSNIP) Internet Article).[1]

Claims 19, 21, 23-24, and 35 stand rejected under 35 U.S.C. § 103(a) as allegedly being "obvious" over Carroll in view of Fenner in view of Beckmann et al. (U.S. Publication No. 2005/0007990).

Claims 4, 17, 22, and 36 stand rejected under 35 U.S.C. § 103(a) as allegedly being "obvious" over Carroll in view of Fenner and Beckmann in view of Cofann et al. (U.S. Publication No. 2002/0059587).

Claims 7-8 and 25-26 stand rejected under 35 U.S.C. § 103(a) as allegedly being "obvious" over Carroll in view of Fenner and Beckmann in view of Briscoe et al. (U.S. Publication No. 2002/0081995).

[1] In attempting to clarify the grounds of rejection in the second Final Office Action, the Examiner has introduced yet further errors. For example, the second Final Office Action suggests at page 2 that claims 19, 21, 23-24, and 35 stand rejected under 35 U.S.C. § 103(a) as allegedly being "obvious" over Carroll in view of Fenner, although there are no details in the pages following regarding such a rejection. Instead, it would appear that claims 19, 21, 23-24, and 35 stand rejected only under 35 U.S.C. § 103(a) as allegedly being "obvious" over Carroll in view of Fenner in view of Beckmann, which Applicant has identified as the second ground of rejection to be reviewed on appeal.

(VII) ARGUMENT

A. Claims 1, 3, 5-6, and 9 Each Are Not Obvious Over Carroll in view of Fenner.

Claims 1, 3, 5-6, and 9 stand rejected under 35 U.S.C. § 103(a) as allegedly being "obvious" over Carroll et al. (U.S. Patent No. 6,327,630) in view of Fenner et al. (Multicast Source Notification of Interest Protocol (MSNIP) Internet Article).[2] This rejection should be reversed for at least the following reasons.

On page 3 of both the First and Second Final Office Actions, the Examiner admits that Carroll fails to teach the last seven lines of claim 1 (which comprises in total only fourteen lines, including four lines of preamble). In particular, the Examiner admits that Carroll fails to teach claim 1's steps of "determining" and "commencing" -- as well as the final "wherein" recitations. In essence, the Examiner has now admitted that Carroll is essentially irrelevant to the Applicant's claimed invention.

The First and Second Final Office Actions rely on Fenner in an attempt to make up for the numerous fundamental admitted deficiencies of Carroll. However, as is explained in greater detail below, Fenner either is irrelevant or, to the extent that it is relevant, teaches directly away from, Applicant's claimed invention.

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[2] As noted above, the second Final Office Action suggests at page 2 that claims 19, 21, 23-24, and 35 stand rejected under 35 U.S.C. § 103(a) as allegedly being "obvious" over Carroll in view of Fenner, although there are no details in the pages following regarding such a rejection. Instead, it would appear that claims 19, 21, 23-24, and 35 stand rejected only under 35 U.S.C. § 103(a) as allegedly being "obvious" over Carroll in view of Fenner in view of Beckmann, which Applicant has identified as the second ground of rejection to be reviewed on appeal.

In the unlikely event that the Examiner intended claims 19, 21, 23-24, and 35 to be rejected based both on the alleged Carroll/Fenner two-way combination, and the alleged Carroll/Fenner/Beckmann three-way combination, Applicant makes the following observations. First, independent claims 19 and 35 include limitations similar to those discussed in connection with claim 1 in Part A of this Section of the Appeal Brief. Thus, claims 19 and 35 should be allowable for substantially the same reasons as claim 1. The rejection based on the alleged Carroll/Fenner/Beckmann three-way combination is discussed in greater detail below in Part B.

In addition, Applicant notes that the proposed "combination" of Carroll and Fenner is not logically suggested by any teaching or suggestion of those references. Indeed, the Examiner's only justification for finding it obvious to make such a combination is that, allegedly, one would seek to modify Carroll so as to include monitoring and transmitting data onto one or more other channels (as allegedly taught by Fenner), to "include multicast channel as taught by fenner [sic] in order to provide transport formation combination thereby improve high quality." Given the grammar of this statement, it is virtually impossible to understand what the Examiner's rationale might be. Such clearly is no substitute for the need for a clearly articulated line of reasoning to support the legal conclusion of obviousness. In any case, this allegation appears to be irrelevant to the issues at hand, regardless of the way that it is interpreted.

> The Examiner argues that Fenner teaches the following steps of claim 1:
>
> "determining from said monitoring if all of the other members have left the waiting channel; and
>
> commencing said action or process in the event that it is determined as a result of said monitoring that all of the other members have left the waiting channel;
>
> wherein said action or process to be performed comprises transmitting data onto one or more other channels."

This plainly is incorrect. Fenner relates to what was referred to in Applicant's Amendment dated December 21, 2007 as the "traditional" operation of MSNIP. As previously explained, in the traditional operation of MSNIP, receipt of a "hold" message is always taken as an indication that an action or process (such as "transmitting data") should be stopped. Such is clear from the excerpts of Fenner cited by the Examiner. That is, from page 2, lines 2-9 of Fenner (as cited by the Examiner), it is clearly stated

that use of MSNIP "enables multicast sources to **avoid** the work of transmitting packets onto their first-hop link when there are no joined receivers" (emphasis added).

Similarly, page 4, lines 20-26 of Fenner (as cited by the Examiner) states that:

> "If and when the IP system notifies the application that receivers exist using the IPMulticastSourceStart call, the application may **start** transmitting data. After the application has been notified to send, if all receivers for the session leave, the IP system will notify the application using the IPMulticastSourceStop call. At this point, the application should **stop** transmitting data until it is notified again that receivers have joined through another IPMulticastSourceStart call" (emphasis added).

With reference to claim 1, the relevant action or process (which is explicitly stated as comprising "transmitting data onto one or more other channels") is commenced or performed after a "hold" message is received. Preferred embodiments of the invention that make use of MSNIP messages, therefore, do so in a new manner.

In particular, according to embodiments of the invention, the type of reaction to receipt of such messages is, therefore, the opposite of what happens in the prior art use of MSNIP. This is, of course, an inventive concept that patentably distinguishes embodiments of the invention from the traditional operation of MSNIP.

Amendments were made in response to the very first Office Action, specifically to better distinguish the independent claims from "traditional MSNIP." The relevant definitions were amended such that they specify ". . . commencing an action or process," this action or process comprising "transmitting data onto one or more other channels." As a result of these recitations, Applicant clarified that with methods and devices according to the claimed invention, the action or process is positively performed, thus clarifying that the action or process is commenced at that point, rather than being stopped

(as would be the case with normal uses of MSNIP). As can be seen, then, the alleged Carroll/Fenner two-way combination either is irrelevant to, or teaches directly away from, Applicant's claimed invention.

Given such fundamental deficiencies with the prior art references individually and in combination, together with the absence of any clearly articulated reasons for making such a combination, Applicant respectfully requests that the rejection of claims 1, 3, 5-6, and 9 be reversed.

B. Claims 19, 21, 23-24, and 35 Each Are Not Obvious over Carroll in view of Fenner and Beckmann.

Claims 19, 21, 23-24, and 35 stand rejected under 35 U.S.C. § 103(a) as allegedly being "obvious" over Carroll in view of Fenner in view of Beckmann et al. (U.S. Publication No. 2005/0007990). This rejection should be reversed for at least the following reasons.

The Second Final Office Action for the first time (and much belatedly) identifies the particular Beckmann publication to which the Examiner apparently intended to refer. Even in this Beckmann publication, however, the cited paragraphs (i.e., paragraphs 41, 42, 43 and 49) are irrelevant to the invention defined by the claims. Moreover, both the First and Second Final Office Actions go on to state in reference to claim 19 that it would have been obvious to modify the method of Carroll "to include monitoring a multicast channel as taught by Beckmann in order to provide the multicast group to which the mobile terminal, thereby improve high quality." Similarly, both the First and Second

Final Office Actions go on to state in reference to claim 35 that it would have been obvious to modify the method of Carroll "to include multicast channel as taught by fenner [sic] in order to provide transport format combination thereby improve high quality."

Again, given the grammar of these statements, it is virtually impossible to understand what the Examiner's rationale might be, and such clearly is no substitute for the need for a clearly articulated line of reasoning to support the legal conclusion of obviousness. Once again, these allegations appear to be irrelevant to the issues at hand, regardless of the possible ways that they are interpreted. For example, Applicant's claims do not relate to "mobile terminals," "transport format combination," "improve high quality," or whatever else the Examiner alleges that Beckmann may teach.

Claim 19 contains features corresponding to the steps recited in claim 1 discussed in detail above. The Examiner's comments with respect to what Carroll and Fenner disclose are, therefore, again incorrect for reasons already noted above regarding claim 1. That is, the introduction of Beckmann fails to make up for such numerous and fundamental deficiencies with Carroll and Fenner.

Moreover, as alluded to above, those portions of Beckmann cited for the proposition that "Beckmann teach waiting channel [sic] relating to an action or process to be performed and to determine from monitoring said waiting channel if all of the other members have left the waiting channel" do not, in fact, include any related teachings. Beckmann actually relates to allocating physical transmission channels in a mobile radio cell and, in Beckmann, the UMTS protocol architecture is implemented in connection

therewith. Thus, it is perhaps not surprising that Beckmann -- including the cited portions thereof -- merely teaches what happens when multicast messages are received on a physical channel. Although admittedly there is some "waiting" and "monitoring" taught in Beckmann (as there naturally would be with any messaging protocol), Beckmann does not teach or suggest a device monitoring a waiting channel to determine whether all of the other members have left the waiting channel, as alleged by the Examiner, and thus fails to teach or suggest that which the Examiner alleges -- to say nothing of the other deficiencies noted above with respect to claim 1.

Claim 35 relates to a method of group co-ordination using a network, wherein members of a group other than a first member join at least one network channel designated as a waiting channel while performing an action or process, and then leave the waiting channel once the action or process has been performed. Claim 35 explicitly states that once those members of a group other than the first member have joined then left the waiting channel, the first member of the group then commences an action or process comprising transmitting data onto one or more channels other than said waiting channel. Claim 35 thus also comprises steps corresponding to steps of claim 1, which clearly and patentably distinguish from anything that could possibly be taught by the combination of Carroll and Fenner, with or without Beckmann.

Given such fundamental deficiencies with the prior art references individually and in combination, together with the absence of any clearly articulated reasons for making such a combination, Applicant respectfully requests that the rejection of claims 19, 21, 23-24, and 35 be reversed.

C. Claims 4, 17, 22, and 36 Each Are Not Obvious over Carroll in view of Fenner and Beckmann in view of Cofann.

Claims 4, 17, 22, and 36 stand rejected under 35 U.S.C. § 103(a) as allegedly being "obvious" over Carroll in view of Fenner and Beckmann in view of Cofann et al. (U.S. Publication No. 2002/0059587). This rejection should be reversed for at least the following reasons. Numerous fundamental deficiencies with Carroll, Fenner, and Beckmann, alone and in various combinations, have been described in detail above. The introduction of Cofann, even if appropriate (which Applicant does not admit in any case), fails to make up for the deficiencies. Thus, Applicant respectfully requests that the rejection of claims 4, 17, 22, and 36 be reversed.

D. Claims 7-8 and 25-26 Each Are Not Obvious over Carroll in view of Fenner and Beckmann in view of Briscoe.

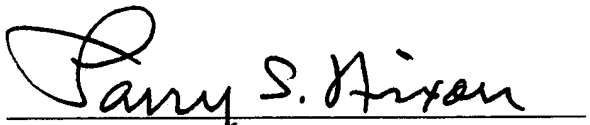
Claims 7-8 and 25-26 stand rejected under 35 U.S.C. § 103(a) as allegedly being "obvious" over Carroll in view of Fenner and Beckmann in view of Briscoe et al. (U.S. Publication No. 2002/0081995). This rejection should be reversed for at least the following reasons. Numerous fundamental deficiencies with Carroll, Fenner, and Beckmann, alone and in various combinations, have been described in detail above. The introduction of Briscoe, even if appropriate (which Applicant does not admit in any case), fails to make up for the deficiencies. Thus, Applicant respectfully requests that the rejection of claims 7-8 and 25-26 be reversed.

CONCLUSION

In conclusion it is believed that the rejections of claims 1, 3-9, 17, 19, 21-26, and 35-36 are erroneous and should be reversed.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 

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(VIII) CLAIMS APPENDIX

1. A method for co-ordinating a group of members, the group comprising a first member and one or more other members, each member being arranged to communicate with the other members of the group via a network, the method comprising, at the first one of said group members:

monitoring at least one waiting channel for messages indicating that at least one of the one or more other members are joined to the waiting channel, said waiting channel relating to an action or process to be performed;

determining from said monitoring if all of the other members have left the waiting channel; and

commencing said action or process in the event that it is determined as a result of said monitoring that all of the other members have left the waiting channel,

wherein said action or process to be performed comprises transmitting data onto one or more other channels.

2. Cancelled.

3. A method according to claim 1, wherein at least one of the one or more other channels is a multicast channel.

4. A method according to claim 2, wherein the data is audio and/or video data.

5. A method according to claim 1, wherein the action or process is to perform a predetermined task.

6. A method according to claim 1, wherein in the case of there being a plurality of other members the waiting channel is a multicast channel.

7. A method according to claim 1, wherein the messages are generated by a network router.

8. A method according to claim 1, wherein the messages are Multicast Source Notification of Interest Protocol (MSNIP) messages.

9. A method according to claim 1, and further comprising the announcing which channel is the waiting channel to the one or more other members.

10-16. Cancelled.

17. A computer-readable storage medium or media storing a computer program or suite of programs so arranged such that when executed by a computer system the program or programs cause the computer system to operate according to the method of claim 1.

18. Cancelled.

19. A device arranged to co-ordinate with one or more other devices, each device being arranged to communicate via a network, the device comprising:

channel monitoring means arranged in use to monitor at least one waiting channel for messages indicating that at least one of the one or more others of said devices are joined to the waiting channel, said waiting channel relating to an action or process to be performed and to determine from monitoring said waiting channel if all of the other members have left the waiting channel; and

means for performing an action or process so arranged such that in the event that it is determined as a result of monitoring performed by said channel monitoring means waiting channel that all of the other devices have left the waiting channel, the means for performing an action or process commences said action or process,

wherein the means for performing an action or process comprises data transmission means arranged in use to transmit data onto on or more other channels.

20. Cancelled.

21. A device according to claim 19, wherein at least one of the one or more other channels is a multicast channel.

22. A device according to claim 19, wherein the data is audio and/or video data.

23. A device according to claim 19, wherein the means for performing an action or process are further arranged in use to perform a predetermined task.

24. A device according to claim 19, wherein in the case of there being a plurality of other devices and the waiting channel being a multicast channel, said channel monitoring means is for monitoring such a multicast channel.

25. A device according to claim 19, wherein the channel monitoring means is arranged to monitor said at least one waiting channel for messages generated by a network router.

26. A device according to claim 19, wherein the messages are Multicast Source Notification of Interest Protocol (MSNIP) messages.

27-34. Cancelled.

35. A method of group co-ordination using a network, wherein members of a group other than a first member join at least one network channel designated as a waiting channel whilst performing an action or process, and then leave the waiting channel once the action or process has been performed, wherein the first member of the group then

commences an action or process comprising transmitting data onto one or more channels other than said waiting channel.

36. A method according to claim 35, wherein messages are sent to the first member on the waiting channel indicating whether or not any of the other members are joined to the waiting channel.

(IX) EVIDENCE APPENDIX

None.

(X) RELATED PROCEEDINGS APPENDIX

None.